November 30, 2011

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

John G. Walsh, Acting Comptroller of the Currency
Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219

Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Gary K. Van Meter, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22012-5090

Re: Docket ID OCC-2011-0024, Docket No. OP-1431, RIN 3064-ZA00, RIN 3052-AC46: Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance

Dear Sirs and Madams:

We write on behalf of the National Association of Insurance Commissioners (NAIC) regarding the proposed revisions to the "Interagency Questions Answers Regarding Flood Insurance." Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S. The NAIC respectfully submits the following comment to the Notice and Request for Comment regarding the interagency guidance published in the October 17, 2011 issue of the Federal Register.

We have serious concerns that the proposed guidance in revised question 62 does not adequately protect insurance consumers that are subject to a force-placed flood insurance policy. The language of concern in the answer to question 62 is as follows:

> "A lender or servicer may charge a borrower for insurance coverage **for any part** of the 45-day notice period in which no adequate borrower-purchased flood insurance coverage is in effect, if

the borrower has given the lender or its servicer the express authority to charge the borrower as a contractual condition of the loan being made. Any policy that is obtained by a lender or servicer, the premium of which is charged to the borrower pursuant to a contractual right, should be equivalent in coverage and exclusions to an NFIP policy and cover the interests of the borrower and the lender…"

While the NAIC has no position on force placement, we recognize the need for lenders to protect their interest in properties by ensuring adequate insurance coverage. We understand that the NFIP has a 30 day waiting period before coverage begins and waiting for the expiration of the 45 day notice period before the force placement of such insurance could effectively result in putting the lender at risk of loss for 75 days. We also acknowledge lenders want to ensure that adequate coverage is in place at the conclusion of the 45 day waiting period even if that means force placing the flood insurance within 15 days of the expiration of the previous policy.[1]

However, the language in the answer to question 62 could be interpreted to allow lenders to force place flood insurance and charge premiums retroactively. A retroactive charging of premiums is in direct contravention of basic insurance indemnity concepts that prohibit an insurer from insuring a known loss after the fact. We believe retroactive placement could encourage adverse selection by banks and insurers that will have the benefit of the knowledge of whether there was a loss to the property during that time period. In the case where no loss occurred during the time period an insurer would be able to bill the borrower for an insurance premium and the consumer would receive no insurance protection from the payment of that premium. Alternatively, if a loss does occur, the insurer could refuse to provide retroactive insurance even though in the previous example such coverage and payment of premium would have been insisted on.

For these reasons, the NAIC respectfully requests that the response to question 62 make clear that under no circumstances could the force placing of such coverage occur retroactively unless such coverage is applied in all circumstances even in cases where loss has occurred during the notice period.

Conclusion

We appreciate the opportunity to comment. Should you wish to discuss this comment or any other matter relating to the NAIC's views on this guidance, please do not hesitate to contact Ethan Sonnichsen, Director of Government Relations, at (202) 471-3980 or Mark Sagat, Government Relations Policy Counsel, at (202) 471-3987.

Sincerely,

Susan E. Voss

Susan E. Voss, Commissioner
Iowa Insurance Division
NAIC President

Therese M. Vaughan

Therese M. Vaughan, Ph.D.
NAIC Chief Executive Officer

[1] We note, however, that a policyholder is entitled to renew flood insurance coverage within 30 days of the expiration of the previous policy and not suffer a lapse in coverage. In cases where the consumer purchases such coverage, the proposing agencies should consider whether it would be appropriate for consumers to be refunded any force placed insurance premiums charged by the lender.